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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION SERIAL NO 10/773,383
FILING DATE February 6, 2004
INVENTORSHIP Salman Akram et al.
ASSIGNEE Micron Technology, Inc.
GROUP ART UNIT 2826
EXAMINER Evan T. Pert
ATTORNEY'S DOCKET NO MI22-2469
TITLE: Methods of Sensing Temperature of an Electronic Device Workpiece

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Commissioner for Patents
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Alexandria VA 22313-1450

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2. Petition under 37 CFR 1.181

Dated: 12/6/2006By: 

Natalie King
Telephone No. (509) 624-4276
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	10773,383
	Filing Date	Feb. 6, 2004
	First Named Inventor	Akram et al.
	Art Unit	2826
	Examiner Name	Evan T. Part
Total Number of Pages in This Submission	Attorney Docket Number	MI22-2469

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ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to a Technology Center (TC)
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/Declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input type="checkbox"/> Other Enclosure(s) (please identify below):
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<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/Incomplete Application	Remarks	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	Customer No. 021567	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual	James D. Shaurette, Reg. No. 39,833 Wells St. John, P.S.
Signature	<i>[Signature]</i>
Date	12/6/06

CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 12/6/2006	
Typed or printed	Natalie King
Signature	<i>[Signature]</i>
Date	12/6/06

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

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PTO/SB/17 (12-04v2)
Approved for use through 07/31/2006, OMB 0551-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). FEE TRANSMITTAL For FY 2005		Complete if Known Application Number 10/773,383 Filing Date Feb. 6, 2004 First Named Inventor Akram et al. Examiner Name Evan T. Part Art Unit 2826 Attorney Docket No. M122-2469	
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		RECEIVED DEC 07 2006 OFFICE OF PETITIONS	
TOTAL AMOUNT OF PAYMENT	(\$)	130.00	

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 23-0925 Deposit Account Name: Wells St. John, P.S.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
50	25

Each independent claim over 3 (including Reissues)

200	100
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Multiple dependent claims

360	180
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Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 20 or HP =	x	=	
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HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 3 or HP =	x	=	
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HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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- 100 =	/ 50 =	(round up to a whole number) x	=	
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4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge): Petition under 37 CFR 1.181

\$130.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 38,933	Telephone 509-624-4278
Name (Print/Type)	James D. Shaurette	Date	12/6/06

This collection of information is required by 37 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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From: James D. Shaurette (Tel. 509-624-4276; Fax 509-838-3424)
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601 W. First Avenue, Suite 1300
Spokane, WA 99201-3828

PETITION UNDER 37 CFR §1.181

The Office has required restriction between Species I and Species II. Applicant elected species I with traverse within a response filed concurrently herewith.

Applicant hereby petitions the director to set aside the Examiner's restriction requirement dated November 6, 2006 in view of both the improper nature of the restriction and the extensive previous prosecution history of the claims now being restricted.

According to MPEP §806.04(f) (8th ed., rev. 5), it is stated a requirement for restriction may be proper if the species are mutually exclusive. Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second

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PAGE 5/9 * RCVD AT 12/6/2006 7:35:36 PM [Eastern Standard Time] * SVR:USPTO-EFRRF-3/4 * DNIS:2738300 * CSID:5098383424 * DURATION (mm-ss):02-50

02/07/2007 LWONDIH1 00000091 230925 10773383

01 FC:1464 130.00 DA

species but not the first. This MPEP section also provides that to require restriction between claims limited to species, the claims must not overlap in scope. The alleged species identified by the Office have not be demonstrated to be mutually exclusive from one another and accordingly the claims are not direct towards different species for which restriction is proper. Applicant respectfully requests withdrawal of the rejection pursuant to the authority of MPEP 806.04(f).

In the instant application, there is overlap of subject matter of the alleged species, and accordingly, restriction of the alleged species is improper under MPEP 806.04(f). In particular, "wafer" is a species of the larger genus "electronic device workpiece" as noted at page 6, lines 11+ of the specification which provides that an electronic device workpiece may be a semiconductor wafer.

Applicants also note dependent claims 43, 78, 80 which further illustrates the relationship of genus and species of electronic device workpiece and wafer. In particular, these claims operate to further define electronic device workpieces as wafers. Accordingly, it is clear that the claims corresponding to the alleged species identified by the Office overlap in scope and the restriction is improper for this additional reason.

Applicant further refers to MPEP 808.02 (8th ed., rev. 5) entitled establishing burden. It is stated in such MPEP section that even if restriction is proper under MPEP §806.05 - 806.06, the Examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden if restriction is not required. Applicants respectfully submits there is no serious burden as required for proper restriction in view of the significant prosecution of the claims up to this point.

More specifically, Applicant notes the prosecution of the subject application has proceeded as follows:

- First Office Action mailed February 9, 2005 rejecting claims 32-43 and 53-75.
- First Office Action Response mailed June 9, 2005, adding new claims 76-83.
- Notice of Allowance mailed November 16, 2005 allowing claims 32-43 and 53-83.
- Withdrawal from Issue Mailed December 5, 2005 withdrawing allowance of claims 32-43 and 53-83.
- Second Office Action mailed April 10, 2006 rejecting claims 32-33, 37-43, 53-57, 60-64, 67-73, and 75-83 over the prior art.
- Second Office Action Response mailed August 10, 2006.
- Third Office Action mailed November 6, 2006 subjecting claims 32-43 and 53-83 to restriction and/or election requirement.

Accordingly, as set forth above, the Office has searched and examined claims of both groups two previous times. Applicants respectfully submit that there is no serious burden in view of the extensive prosecution, searching and examination of the pending claims.

Furthermore, Applicant further contends that any restriction is improper for at least the following reasons.

First, the Office has apparently already searched and examined the pending claims which are now the subject of restriction. Accordingly, now requiring elimination of any set of claims will not reduce the scope of searching, and thus there are no efficiencies gained by imposing a restriction requirement. In addition, restriction at this late time is not timely, and does not have any sense of fairness to Applicant.

Restriction is not proper since there is increased burden on the U.S. Patent and Trademark Office, on the Applicant and ultimately on the public in prosecuting multiple separate patent applications. For Applicant, splitting the invention into multiple cases increases costs associated with government fees, prosecution fees, and maintenance fees for multiple patents. For the PTO, there are increased costs associated with conducting multiple searches in multiple applications and multiple examinations for an invention that already has been searched and examined. It further ultimately produces a burden on the pertinent public that will review Applicant's commonly patented technology. Such people will be compelled to unnecessarily review multiple issued patents and file histories.

Pursuant to MPEP 803 (8th ed., rev. 5), it is stated that *if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions*. In view of the prior two examinations of the present application, Applicant respectfully submits no serious burden exists and Applicant respectfully requests withdrawal of the restriction requirement for this additional reason.

In sum, claims of the alleged species identified by the Office overlap in scope and accordingly restriction is not proper pursuant to MPEP §806.04(f). Restriction is additionally not proper under MPEP 808.02 and MPEP 803 in view of the extensive

previous prosecution of the present application including *examination of the claims two previous times on the merits*. Furthermore, the claims which are now restricted were previously allowed by the Office and allowance was withdrawn by the Office. Applicants respectfully submit there is no sense of fairness to now restrict claims which have been extensively prosecuted, allowed and then withdrawn from allowance by the Office and examined again.


Applicant respectfully asserts that the Examiner's restriction requirement is improper, and requests that the restriction requirement be withdrawn and the already examined claims considered in this application at this time.

Applicants request allowance of all pending claims.

The Examiner is requested to phone the undersigned if the Examiner believes such would facilitate prosecution of the present application. The undersigned is available for telephone consultation at any time during normal business hours (Pacific Time Zone).

Respectfully submitted,

Dated: 12/6/06

By: 
James D. Shaurette
Reg. No. 39,833